

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

Elbert Kirby, Jr., and
Caleb Meadows,

Plaintiffs,

v.

DAVID M. O'DENS, *et al.*

Defendants.

FILED

SEP 8 2015

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 2014-CV-0388-GKF-PJC

**PLAINTFFS' MOTION TO STRIKE HEARING BY CLEARY ON
DEFENDNATS MOTION FOR SANCTIONS**

COME NOW, Plaintiffs, Caleb Meadows and Elbert Kirby, Jr., and move to strike the hearing set for September 9, 2015.

Foremost, at the previous hearing by Magistrate Cleary, the Plaintiffs were apprehended of their First amendment right and threatened that if they speak they would be jailed. The Plaintiffs have no guarantee or assurance that the same thoughtless actions will not occur again.

It is not conducive for a hearing to be had in this type of environment when the Magistrate cannot even hear both sides equally and without threats.

The record of the hearing is clear that neither of the Plaintiffs attacked or dishonored Cleary in any way while at the hearing, it was Cleary's own counterfactual simulation. The Plaintiffs maintain peace and expect the same in return. However, it is evident by Cleary's actions that he has a disgust toward the Plaintiffs since they are not

Plaintiffs' Motion to Strike Hearing

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attorneys and Cleary shows a propensity to manipulate the record as well as use procedural elements to obfuscate the defendants unlawful debt collecting practices by highlighting irrelevant controversies in an effort to confusion and mar the case to favor his fellow BAR Members.

The Plaintiffs' Affidavit of Bias and Prejudice still out-stands and has not been rebutted or countered with facts or evidence by the defendants.

Therefore from Cleary's conduct with the Plaintiffs, the Plaintiffs would now have to subject themselves to severe duress and oppression due to Cleary's instability in ensuring that the Plaintiffs are properly heard.

Second, the Plaintiffs have not been allowed a response to defendants' motion. The Plaintiffs filed for leave of court on August 28, 2015, to respond to the defendants' motion, the court has not decided on that motion.

Third, the Plaintiffs have a conflict with the date at time which the hearing is currently scheduled and would only be able to appear telephonically before Cleary.

Additionally, Cleary has had ex-parte communications with the defendants. At the Plaintiffs scheduled deposition Cleary and O'Dens were seen in the court house hallway speaking to each other for at least five minutes. The Plaintiffs were departing the witness room and entering the court room when they observed Cleary and O'Dens in their ex-parte communications. Upon entering the court room and presence of the Plaintiffs, neither Cleary or O'Dens communicated what they had been talking about in

the hallway. This is undue prejudice to the Plaintiffs and yet another example of Cleary's inability to hear the Plaintiffs and bias toward the Plaintiffs.

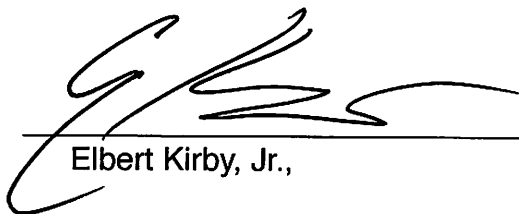
Again, a hearing by Cleary who already has shown numerous examples of bias and indifference toward the Plaintiffs would give the Plaintiffs no equal opportunity to be heard when the ears that are listening are already turned off to what the Plaintiffs are saying.

Conclusion

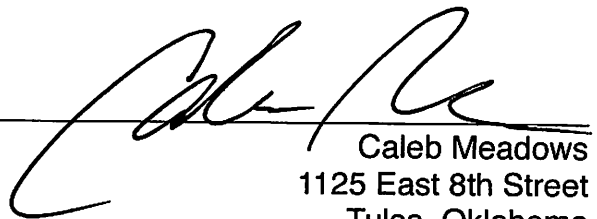
THEREFORE, it is just and proper that additional time be allowed for the hearing to be struck, decision made on Cleary's conduct or alternatively the hearing be held telephonically after the Plaintiffs have been permitted in writing to respond to the defendants' motion.

Respectfully submitted and stated,

4th Sept
This ~~28th~~ day of August, 2015 CE.



Elbert Kirby, Jr.,

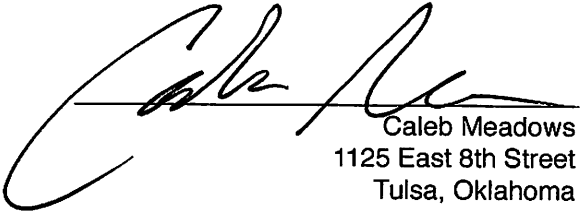


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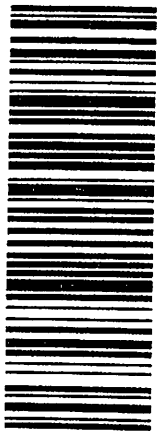
Certificate of Service

I certify that a true and correct copy of the foregoing document has been sent postage prepaid and affixed to defendant's counsel of record by electronic mail and filed with the Clerk of Court of the United States District Court of the Northern District of Oklahoma on the last day stated above.

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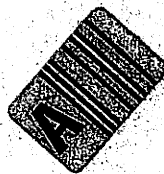
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